REMARKS/ARGUMENTS

By the present amendment, applicants have canceled Claim 10, as being drawn to a non-elected invention. Applicants have amended Claims 1-3, 7-8, and 11. Applicants have corrected a typographical error in Claim 7 wherein applicants inadvertently left out the term "ethyl" from the chemical name "1-(4-pyridyl)-2-(N-(2-(3,4-dichlorophenyl)ethyl-N-methylamino)ethanol." Support for the correct chemical name is found in applicants' specification, as originally filed, on page 6, line 1. Therefore, the claims remaining for consideration by the Examiner are Claims 1-9 and 11.

I. Restriction under 35 U.S.C. § 121 and 372

The Examiner restricted the following invention under 35 U.S.C. § 121 and 372 as follows:

I. Claim 10, drawn to the use of claim 10 for inhibiting cholesterol biosynthesis for the preparation of pharmaceutical compositions for treating hypercholesterolemia and hyperlipidemia.

II. Claims 1-9 and 11, drawn to the compound and composition of formula I.

Applicants affirm their provisional election to prosecute the invention of Group II, Claims 1-9 and 11.

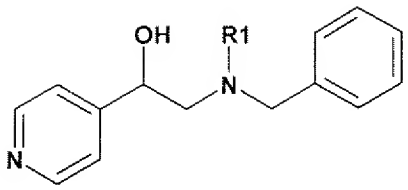
The Examiner states that this application contains claims directed to more than one species of the generic invention. The Examiner requests that a species election be made from the species in Claims 4-7.

In response, Applicants elect the species in Claim 4, 1-(3-pyridyl-2-(N-(2-(3,4-dichlorophenyl)ethyl-N-proplyamino)ethanol and a dihydrobromide salt thereof. Claims 1-4 and 9-11 read on the elected species.

II. Rejection of Claims 1-3 and 8 under 35 U.S.C. § 102 (b)

The Examiner has rejected Claims 1-3 and 8 under 35 U.S.C. 102(b) as being anticipated by Schultz et. al, *Archiv der Pharamzie*, **1972**, pages 248-253.

Schultz discloses various N-substituted derivatives of 1-(4-pyridyl)-2-amino alkanols. In Tabelle I on page 251, Schultz discloses compounds represented by the formula:



wherein R_1 is methyl, ethyl, or iso-propyl. While Schultz discloses various 1-(4-pyridyl)-2-amino alkanols, the only aromatic substituent disclosed is the unsubstituted benzyl moiety. Other substituents disclosed by Schultz are non-aromatic, namely straight and branched alkyl groups (e.g. methyl, ethyl, iso-propyl, tert-butyl).

In response, applicants have amended Claim 1 to specifically exclude analogues having a benzyl moiety (i.e. where n equals 1). In applicants' invention as claimed, nitrogen is substituted with phenylethyl, phenylpropyl, or phenylbutyl.

III. Rejection of Claims 1-9 and 11 under 35 U.S.C. § 112

The Examiner has rejected Claims 1-9 and 11 under 35 U.S.C 112, second paragraph, as being indefinite because the term "compounds" and the phrase "and enantiomers, diastereomers, or racemeates" is unclear.

In response, applicants have amended the claims to limit the compound to "a compound having formula I", and to include "an enantiomer, diastereoisomer, and racemate thereof, and a physiologically acceptable acid addition salt thereof".

The Examiner has rejected Claim 2 because of insufficient antecedent basis for a limitation in the claim.

In response, applicants have amended Claim 2 to define X as 3,4-dichlorophenyl or 2,4-dichlorophenyl.

IV. Information Disclosure Statement

The Examiner noted that references listed on the IDS filed January 14, 2005 were not provided.

In response, applicants direct the Examiner's attention to the corresponding PCT application PCT/SI03/00021, wherein the references are of record. For the convenience of the Examiner, applicants have attached copies of the references hereto.

In view of the foregoing amendments and remarks, reconsideration and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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